

Calendar No. 813

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 108-426

PUBLIC BROADCAST REAUTHORIZATION ACT
OF 2004

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2505



DECEMBER 7, 2004.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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PUBLIC BROADCAST REAUTHORIZATION ACT OF 2004

DECEMBER 7, 2004.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2505]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2505) to implement the recommendations of the Federal Communications Commission report to the Congress regarding low power FM service, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2505 is to implement the Federal Communications Commission's (FCC) recommendations with respect to the assignment of low power FM (LPFM) radio licenses. The FCC recommended that Congress eliminate certain restrictions on the assignment of these licenses and the statutory requirement for the FCC to conduct additional testing on the possibility of interference from LPFM stations to commercial broadcasters and on the possibility that LPFM stations may pose an economic impact on full power FM stations.

BACKGROUND AND NEEDS

In 2000, the FCC authorized the creation of LPFM stations to allow noncommercial, educational, community-based groups and public safety organizations to provide a community-based radio service. LPFM licenses are not available to individuals or entities that currently hold a broadcast license. As of October 2004, the FCC had issued 1100 construction permits for LPFM stations. Of those construction permits issued, 275 LPFM stations have been licensed, 200 have expired without being built and the remaining are

presumably in the process of being built. In addition, 190 LPFM license applications are pending at the FCC for approval. LPFM stations generally reach audiences within a radius of 3.5 miles from the LPFM station's transmitting tower and are not protected from interference that may be received from a full power FM station.

The FCC's rules require LPFM stations to provide interference protection to full power FM stations. For example, a new LPFM station operating on the same frequency as an existing full power FM station (for example, at 101.1 FM) is required to have its transmitter located far enough away from the existing station's transmitter to prevent interference. In addition, an LPFM station on the "first adjacent channel" (101.3 FM) or a "second adjacent channel" (101.5 FM) must also adhere to distance spacing requirements to prevent interference, though the distance requirements are not as far as for LPFM stations operating on the same frequency.

When it first adopted its LPFM rules, the FCC determined that an LPFM station broadcasting on a "third adjacent channel" to a full power FM station (101.7 FM in the continuing example) would not cause significant interference to a full power FM station. Therefore, the FCC allowed LPFM stations to operate on a third adjacent channel to a full power FM station without imposing any minimum distance separation requirement. However, before the FCC was able to fully implement this decision, Congress in late 2000 attached language to an appropriations bill requiring the FCC to: (1) hire an independent engineering firm to further study possible interference between full power FM stations and LPFM stations operating on a third adjacent channels, (2) delay the removal of third adjacent channel separation requirements, and (3) report the study's findings and any recommendations to Congress.

Congress's action, which largely affected metropolitan areas, led to the elimination of at least 50 percent of the pending LPFM applications. As a result, there is only one LPFM station licensed in the top 50 cities nationwide. After the appropriations bill passed, the FCC hired Mitre Corporation to perform a study of LPFM interference to full power FM stations. The study took over two years to complete and cost over two million dollars. The study confirmed the FCC's initial findings: LPFM on third adjacent channels poses no significant risk of interference to other radio broadcast stations. The FCC issued its report to Congress in February 2004 recommending that Congress (1) eliminate the existing third adjacent minimum distance separation requirements between LPFM stations and full power FM stations and (2) eliminate the requirement from the 2000 legislation mandating further testing on the economic impact potential interference from LPFM stations would have on full power FM stations.

Low power proponents cite the study as conclusive evidence that the third adjacent channel protections are not necessary. Existing full power FM licensees continue to oppose removal of the third adjacent channel protection and have taken issue with the study. According to the National Association of Broadcasters, the study (1) contained severe methodological errors that skewed its results; (2) failed to meet the Congressional directive to conduct independent audience listening tests to establish what is objectionable interference; and (3) failed to meet the Congressional directive to examine the economic impact third adjacent LPFM stations would have

on full power FM broadcasters. In its report to Congress, the Mitre Corporation recommended not performing the subsequent testing, because of the dearth of evidence of any interference in the first instance. The FCC estimates that the additional study would cost over \$800,000 to complete.

LEGISLATIVE HISTORY

On June 4, 2004, Senator McCain introduced S. 2505, a bill to implement the Federal Communications Commission's (FCC) recommendations, which would expand the availability of LPFM radio licenses and eliminate the requirement for further testing on the possibility of interference from LPFM stations to commercial broadcasters on third adjacent channels and on the possibility that LPFM stations may pose an economic impact on full power FM stations.

On July 20, 2004 the Committee held an executive session at which S. 2505 was considered. By voice vote, the Committee adopted an amendment proposed by Senator Lautenberg to provide third-adjacent channel protection for full-power FM stations that are licensed in certain states, and for other purposes. The bill, as amended, was approved by a roll call vote of 12-10.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 6, 2004.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2505, a bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low power FM service.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director.)

Enclosure.

S. 2505—A bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low power FM service

Summary: S. 2505 would change the criteria in current law for licensing of low-power radio stations by the Federal Communications Commission (FCC). Such stations are operated by non-commercial entities and broadcast very weak signals (100 watts or less) that reach a limited geographic area. This bill would repeal

some of the engineering requirements that currently limit the number of low-power radio stations that can operate in certain areas.

CBO estimates that implementing the bill would have no significant effect on spending subject to appropriation and would not affect direct spending or revenues. Easing the restrictions on low-power radio stations would likely increase the number of applications for such licenses. Based on information from the FCC, CBO estimates that the administrative costs of processing additional license applications would be negligible and that there would be no change in the FCC's offsetting collections because noncommercial entities do not pay application or regulatory fees for such licenses.

S. 2505 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, and any costs to state, local, or tribal governments would be voluntary. To the extent that public choose to apply for and develop new radio stations, they would voluntarily incur some costs.

The CBO staff contact for this estimate is Melissa E. Zimmerman. The estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2505 would expand the availability of LPFM radio licenses and eliminate the requirement for further testing. The number of persons covered by this legislation should be consistent with current levels of individuals affected.

ECONOMIC IMPACT

S. 2505 would expand the number of radio stations available for potential licensees and promote a new media outlet for consumers and advertisers.

PRIVACY

S. 2505 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 2505 has minimal or no impact on current paperwork levels as the FCC is already issuing LPFM station licenses.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings

Section 1 would set forth Congressional findings on LPFM. The findings detail the history of the community-based radio service, including the FCC's enactment in September 2000 of a simple process to address complaints from full power FM radio stations concerning interference from LPFM stations.

Sec. 2. Repeal of prior law

Section 2 would repeal the language in the 2000 appropriations bill that required the FCC to delay the licensing of LPFM stations on third adjacent channels to full power FM stations. See Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106-553; 114 Stat. 16 2762A-111).

Sec. 3. Minimum distance separation requirements

Section 3 would direct the FCC to modify its rules to eliminate third adjacent minimum distance separation requirements between LPFM stations and full power FM stations, FM translator stations, and FM booster stations.

Sec. 4. Protection of radio reading services

Section 4 would provide interference protection to “radio reading service” (RRS) stations that provide reading services over the radio frequencies to assist the blind. These stations broadcast using a sub-carrier frequency, which is more susceptible to LPFM interference due to its spacing on an FM channel. The FCC currently has a temporary rule preventing LPFM stations from operating on a third adjacent channel to a RRS. This section would direct the FCC to make this rule permanent.

Sec. 5. Federal Communications Commission rules

Section 5 directs the FCC to retain its third-adjacent channel protection for full-power FM stations in certain States.

Sec. 6. Translator licensing

Section 6 directs the FCC to evaluate the impact of translator licensing on radio stations and to promote opportunities for local low power stations and protect full power stations.

ROLLCALL VOTES IN COMMITTEE

Senator Burns offered an amendment to implement the recommendations of the Federal Communications Commission report to the Congress regarding low power FM service. By rollcall vote of 10 yeas and 12 nays as follows, the amendment was defeated:

YEAS—10	NAYS—12
Mr. Stevens	Mr. Brownback
Mr. Burns	Mr. Fitzgerald
Mr. Lott	Mr. Hollings
Mrs. Hutchison	Mr. Inouye
Ms. Snowe ¹	Mr. Rockefeller
Mr. Smith	Mr. Breaux
Mr. Ensign	Mr. Dorgan
Mr. Allen	Mr. Wyden
Mr. Sununu	Mrs. Boxer
Mr. Lautenberg	Mr. Nelson
	Ms. Cantwell
	Mr. McCain

¹By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE
JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS
ACT, 2001

[PUBLIC LAW 106–553, APPENDIX B; 114 STAT. 2762A–111]

[SEC. 632. (a)(1) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99–25, to—

[(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and

[(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

[(2) The Federal Communications Commission may not—

[(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A); or

[(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99–25 (47 CFR 73.853), except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act.

[(3) Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

[(b)(1) The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct such test in no more than nine FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclusion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

[(2) The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

[(A) an opportunity for the public to comment on interference; and

[(B) independent audience listening tests to determine what is objectionable and harmful interference to the average radio listener.

[(3) The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

[(A) an analysis of the experimental program and field tests and of the public comment received by the Commission;

[(B) an evaluation of the impact of the modification or elimination of minimum distance separations for third-adjacent channels on—

[(i) listening audiences;

[(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;

[(iii) the transition to digital radio for terrestrial radio broadcasters;

[(iv) stations that provide a reading service for the blind to the public; and

[(v) FM radio translator stations;

[(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and

[(D) such other information and recommendations as the Commission considers appropriate.]